

Proceeding: IN THE MATTER OF PETITION FOR PREEMPTION OF NEBRASKA PUBLIC ☒ Record 1 of 1

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Proceeding Name: 98-84

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
MCLEODUSA TELECOMMUNICATIONS)	
SERVICES, INC.)	
)	
Petition for Preemption of Nebraska Public)	CC Docket No. 98-84
Service Commission Decision Permitting)	
Withdrawal of Centrex Plus Service by)	
U S WEST Communications, Inc.)	

COMMENTS ON U S WEST COMMUNICATIONS, INC.
EX PARTE SUBMISSION

U S WEST Communications, Inc. ("U S WEST "), in response to the Federal Communications Commission's ("Commission") Public Notice of September 3, 1998,¹ hereby submits its comments on its own August 21, 1998 Ex Parte Presentation in the above-captioned docket. The Public Notice asks for responses to three questions, which are addressed herein.

1. [D]oes the complaint filed with this Commission by Enhanced Telemanagement Inc. pursuant to section 208 of the Act (File No. 96-23, which is referenced in the comments filed in this proceeding by Frontier Telemanagement Inc.) provide an adequate alternative to the remedies sought in McLeodUSA's

¹ Public Notice, Pleading Cycle Established for Comments on US WEST's Ex Parte Submission Concerning the Petition for Preemption, Declaratory Ruling, and Injunctive Relief Filed by McLeodUSA Telecommunications Services, Inc., CC Docket No. 98-84, DA 98-1792, rel. Sep. 3, 1998.

preemption petition?²

While U S WEST is of the opinion that the Commission has no legal authority to act on either the McLeod petition or the Frontier complaint, we submit that the legal theories behind the two actions are completely different. The McLeod petition requests that the Commission nullify some action by the Nebraska Public Service Commission ("PSC") (although, given the action by the Nebraska Supreme Court, exactly what action is sought to be nullified is subject to some question). The McLeod petition therefore assumes, correctly, that U S WEST's actions are and will continue to be lawful until after the Commission has acted on the petition. The Frontier complaint, on the other hand, simply requests that the Commission ignore the jurisdiction of the various state commissions and declare that U S WEST's actions relating to the withdrawal of an intrastate Centrex service violate federal law. We submit that Frontier's position is legally erroneous on its face.

U S WEST's withdrawal of an intrastate service cannot violate the federal Communications Act until and unless the Commission exercises appropriate preemption authority under Section 253 of the Act. Accordingly, the Frontier complaint does not provide a viable alternative to the McLeod preemption petition.

2. Under Nebraska law, can a certificated local exchange carrier [LEC] now file another complaint with the Nebraska Commission challenging U S WEST's withdrawal of Centrex, or would such a complaint be barred by time limitations or

² Id. at 2.

other procedural requirements?³

Under Nebraska law, a LEC which has been certificated to provide local exchange telecommunications service in the state and has thus gained standing under the requirements of the Nebraska Supreme Court's decision could file a complaint with the Nebraska PSC challenging U S WEST's withdrawal of its Centrex Plus service. Such a complaint would not be barred by time limitations or, so far as U S WEST is aware, other procedural impediments, with one possible exception. U S WEST would argue that a carrier has no right to complain that a service withdrawn prior to the carrier's certification is the valid subject of a complaint to the Commission, and the Commission could consider this argument in either a procedural context or on the merits (i.e., in determining whether U S WEST's withdrawal of the service was unreasonable).

3. In the absence of a Nebraska Commission order denying a complaint challenging U S WEST's withdrawal of Centrex, is there any Nebraska statute, regulation, or "other legal requirement" within the meaning of section 253(a) (e.g., a Nebraska Commission order approving a request to withdraw service), the preemption of which would provide essentially the same relief as requested in McLeodUSA's petition?⁴

There is no single Nebraska legal requirement, preemption of which would give McLeodUSA the relief requested in its petition. The Nebraska PSC's decision of November 25, 1996 reviewed and relied upon several state statutes, regulations

³ Id.

and other legal requirements that U S WEST's withdrawal of Centrex Plus service was not in violation of Nebraska law. However, because of the fact that none of the complainants were certificated at the time the complaints were filed, the Nebraska Supreme Court has reversed the Nebraska PSC's order and directed the Nebraska PSC to dismiss the complaints. Accordingly, there is at present no formal state action dealing with U S WEST's withdrawal of Centrex Plus service.

Respectfully submitted,

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September 24, 1998

⁴ Id.

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that on this 24th day of September, 1998,
I have caused a copy of the foregoing **COMMENTS ON U S WEST
COMMUNICATIONS, INC. EX PARTE SUBMISSION** to be served, via first
class United States Mail, postage pre-paid, upon the persons listed on the attached
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